

Introduced by Senator McClintock

February 19, 2004

An act to amend Sections 11340, 11340.85, 11342.610, 11346.2, 11346.3, 11346.4, 11346.45, 11346.5, 11347.6, 11349.7, 11350, and 11350.3 of the Government Code, relating to administrative rulemaking.

LEGISLATIVE COUNSEL'S DIGEST

SB 1505, as introduced, McClintock. Administrative Procedure Act: small business.

The Administrative Procedure Act generally sets forth the requirements for the adoption, publication, review, and implementation of regulations by state agencies that affect, among other things, a small business, as defined.

This bill would create the California Small Business Regulatory Flexibility Act of 2004 by making revisions to the above act, as follows:

(1) Redefine "small business" as a specified business entity, including its affiliates.

(2) Require a small business impact statement for adopting, amending, or repealing a regulation.

(3) Require the agency that proposes the adoption, amendment, or repeal of a regulation that maintains an Internet Web site to publish the statement on its Web page.

(4) Require that the notice of the proposed action to adopt, amend, or repeal a regulation be also mailed to the California Small Business Advocate and that the advocate be given 30 days to submit comments and make recommendations to the agency which the agency must respond to in a final statement of reasons.

(5) Require that the notice of the proposed action contain specified information if the agency determines that the action may have a significant, statewide adverse economic impact on small business, as specified.

(6) Require the agency to identify in the final statement of reasons comments made by small businesses.

(7) Require the Office of Administrative Law to initiate a priority review of any regulation at the request of the California Small Business Advocate.

(8) Authorize small businesses to obtain a judicial declaration as to the validity of a regulation or order of repeal, as specified.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. This act shall be known and may be cited as the
2 California Small Business Regulatory Flexibility Act of 2004.

3 SEC. 2. Section 11340 of the Government Code is amended
4 to read:

5 11340. The Legislature finds and declares as follows:

6 (a) There has been an unprecedented growth in the number of
7 administrative regulations in recent years.

8 (b) The language of many regulations is frequently unclear and
9 unnecessarily complex, even when the complicated and technical
10 nature of the subject matter is taken into account. The language is
11 often confusing to the persons who must comply with the
12 regulations.

13 (c) Substantial time and public funds have been spent in
14 adopting regulations, the necessity for which has not been
15 established.

16 (d) The imposition of prescriptive standards upon private
17 persons and entities through regulations where the establishment
18 of performance standards could reasonably be expected to produce
19 the same result has placed an unnecessary burden on California
20 citizens and discouraged innovation, research, and development of
21 improved means of achieving desirable social goals.

22 (e) There exists no central office in state government with the
23 power and duty to review regulations to ensure that they are



1 written in a comprehensible manner, are authorized by statute, and
2 are consistent with other law.

3 (f) Correcting the problems that have been caused by the
4 unprecedented growth of regulations in California requires the
5 direct involvement of the Legislature as well as that of the
6 executive branch of state government.

7 (g) The complexity and lack of clarity in many regulations put
8 small businesses, which do not have the resources to hire experts
9 to assist them, at a distinct disadvantage.

10 (h) *A vibrant and growing small business sector is critical to*
11 *creating jobs in a dynamic economy.*

12 (i) *Small businesses bear a disproportionate share of*
13 *regulatory costs and burdens.*

14 (j) *Fundamental changes that are needed in the regulatory and*
15 *enforcement culture of state agencies to make them more*
16 *responsive to small business can be made without compromising*
17 *the statutory missions of the agencies.*

18 (k) *When adopting regulations to protect the health, safety, and*
19 *economic welfare of California, state agencies should seek to*
20 *achieve statutory goals as effectively and efficiently as possible*
21 *without imposing unnecessary burdens on small employers.*

22 (l) *Uniform regulatory and reporting requirements can impose*
23 *unnecessary and disproportionately burdensome demands*
24 *including legal, accounting, and consulting costs upon small*
25 *businesses with limited resources.*

26 (m) *The failure to recognize differences in the scale and*
27 *resources of regulated businesses can adversely affect competition*
28 *in the marketplace, discourage innovation, and restrict*
29 *improvements in productivity.*

30 (n) *Unnecessary regulations create entry barriers in many*
31 *industries and discourage potential entrepreneurs from*
32 *introducing beneficial products and processes.*

33 (o) *The practice of treating all regulated businesses as*
34 *equivalent may lead to inefficient use of regulatory agency*
35 *resources, enforcement problems, and, in some cases, to actions*
36 *inconsistent with the legislative intent of health, safety,*
37 *environmental, and economic welfare legislation.*

38 (p) *Alternative regulatory approaches that do not conflict with*
39 *the stated objective of applicable statutes may be available to*

1 *minimize the significant economic impact of rules on small*
2 *businesses.*

3 *(q) The process by which state regulations are developed and*
4 *adopted should be reformed to require agencies to solicit the ideas*
5 *and comments of small businesses, to examine the impact of*
6 *proposed and existing rules on those businesses, and to review the*
7 *continued need for existing rules.*

8 SEC. 3. Section 11340.85 of the Government Code is
9 amended to read:

10 11340.85. (a) As used in this section, “electronic
11 communication” includes electronic transmission of written or
12 graphical material by electronic mail, facsimile, or other means,
13 but does not include voice communication.

14 (b) Notwithstanding any other provision of this chapter that
15 refers to mailing or to oral or written communication:

16 (1) An agency may permit and encourage use of electronic
17 communication, but may not require use of electronic
18 communication.

19 (2) An agency may publish or distribute a document required
20 by this chapter or by a regulation implementing this chapter by
21 means of electronic communication, but shall not make that the
22 exclusive means by which the document is published or
23 distributed.

24 (3) A notice required or authorized by this chapter or by a
25 regulation implementing this chapter may be delivered to a person
26 by means of electronic communication if the person has expressly
27 indicated a willingness to receive the notice by means of electronic
28 communication.

29 (4) A comment regarding a regulation may be delivered to an
30 agency by means of electronic communication.

31 (5) A petition regarding a regulation may be delivered to an
32 agency by means of electronic communication if the agency has
33 expressly indicated a willingness to receive a petition by means of
34 electronic communication.

35 (c) An agency that maintains an Internet Web site or other
36 similar forum for the electronic publication or distribution of
37 written material shall publish on that Web site or other forum
38 information regarding a proposed regulation or regulatory repeal
39 or amendment, that includes, but is not limited to, the following:



1 (1) Any public notice required by this chapter or by a regulation
2 implementing this chapter.

3 (2) The initial statement of reasons prepared pursuant to
4 subdivision (b) of Section 11346.2.

5 (3) The final statement of reasons prepared pursuant to
6 subdivision (a) of Section 11346.9.

7 (4) Notice of a decision not to proceed prepared pursuant to
8 Section 11347.

9 (5) The text of a proposed action or instructions on how to
10 obtain a copy of the text.

11 (6) A statement of any decision made by the office regarding
12 a proposed action.

13 (7) The date a rulemaking action is filed with the Secretary of
14 State.

15 (8) The effective date of a rulemaking action.

16 (9) A statement to the effect that a business or person
17 submitting a comment regarding a proposed action has the right to
18 request a copy of the final statement of reasons.

19 (10) The text of a proposed emergency adoption, amendment,
20 or repeal of a regulation pursuant to Section 11346.1 and the date
21 it was submitted to the office for review and filing.

22 *(11) The small business economic impact statement, as*
23 *required by Section 11346.3.*

24 (d) A document that is required to be posted pursuant to
25 subdivision (c) shall be posted within a reasonable time after
26 issuance of the document, and shall remain posted until at least 15
27 days after (1) the rulemaking action is filed with the Secretary of
28 State, or (2) notice of a decision not to proceed is published
29 pursuant to Section 11347. Publication under subdivision (c)
30 supplements any other required form of publication or
31 distribution. Failure to comply with this section is not grounds for
32 disapproval of a proposed regulation. Subdivision (c) does not
33 require an agency to establish or maintain a Web site or other
34 forum for the electronic publication or distribution of written
35 material.

36 (e) Nothing in this section precludes the office from requiring
37 that the material submitted to the office for publication in the
38 California Code of Regulations or the California Regulatory
39 Notice Register be submitted in electronic form.

(f) This section is intended to make the regulatory process more user-friendly and to improve communication between interested parties and the regulatory agencies.

SEC. 4. Section 11342.610 of the Government Code is amended to read:

11342.610. ~~(a) “Small business” means a business activity in agriculture, general construction, special trade construction, retail trade, wholesale trade, services, transportation and warehousing, manufacturing, generation and transmission of electric power, or a health care facility, unless excluded in subdivision (b), that is both of the following:~~

~~(1) Independently owned and operated.~~

~~(2) Not dominant in its field of operation.~~

~~(b) “Small business” does not include the following professional and business activities:~~

~~(1) A financial institution including a bank, a trust, a savings and loan association, a thrift institution, a consumer finance company, a commercial finance company, an industrial finance company, a credit union, a mortgage and investment banker, a securities broker-dealer, or an investment adviser.~~

~~(2) An insurance company, either stock or mutual.~~

~~(3) A mineral, oil, or gas broker.~~

~~(4) A subdivider or developer.~~

~~(5) A landscape architect, an architect, or a building designer.~~

~~(6) An entity organized as a nonprofit institution.~~

~~(7) An entertainment activity or production, including a motion picture, a stage performance, a television or radio station, or a production company.~~

~~(8) A utility, a water company, or a power transmission company generating and transmitting more than 4.5 million kilowatt hours annually.~~

~~(9) A petroleum producer, a natural gas producer, a refiner, or a pipeline.~~

~~(10) A manufacturing enterprise exceeding 250 employees.~~

~~(11) A health care facility exceeding 150 beds or one million five hundred thousand dollars (\$1,500,000) in annual gross receipts.~~

~~(c) “Small business” does not include the following business activities:~~

1 ~~(1) Agriculture, where the annual gross receipts exceed one~~
2 ~~million dollars (\$1,000,000).~~

3 ~~(2) General construction, where the annual gross receipts~~
4 ~~exceed nine million five hundred thousand dollars (\$9,500,000).~~

5 ~~(3) Special trade construction, where the annual gross receipts~~
6 ~~exceed five million dollars (\$5,000,000).~~

7 ~~(4) Retail trade, where the annual gross receipts exceed two~~
8 ~~million dollars (\$2,000,000).~~

9 ~~(5) Wholesale trade, where the annual gross receipts exceed~~
10 ~~nine million five hundred thousand dollars (\$9,500,000).~~

11 ~~(6) Services, where the annual gross receipts exceed two~~
12 ~~million dollars (\$2,000,000).~~

13 ~~(7) Transportation and warehousing, where the annual gross~~
14 ~~receipts exceed one million five hundred thousand dollars~~
15 ~~(\$1,500,000).~~ *entity, including its affiliates, that (a) is*
16 *independently owned and operated and (b) employs fewer than*
17 *100 full-time employees or has gross annual sales of less than ten*
18 *million dollars (\$10,000,000).*

19 SEC. 5. Section 11346.2 of the Government Code is amended
20 to read:

21 11346.2. Every agency subject to this chapter shall prepare,
22 submit to the office with the notice of the proposed action as
23 described in Section 11346.5, and make available to the public
24 upon request, all of the following:

25 (a) A copy of the express terms of the proposed regulation.

26 (1) The agency shall draft the regulation in plain,
27 straightforward language, avoiding technical terms as much as
28 possible, and using a coherent and easily readable style. The
29 agency shall draft the regulation in plain English.

30 (2) The agency shall include a notation following the express
31 terms of each California Code of Regulations section, listing the
32 specific statutes or other provisions of law authorizing the
33 adoption of the regulation and listing the specific statutes or other
34 provisions of law being implemented, interpreted, or made
35 specific by that section in the California Code of Regulations.

36 (3) The agency shall use underline or italics to indicate
37 additions to, and strikeout to indicate deletions from, the
38 California Code of Regulations.

(b) An initial statement of reasons for proposing the adoption, amendment, or repeal of a regulation. This statement of reasons shall include, but not be limited to, all of the following:

(1) A statement of the specific purpose of each adoption, amendment, or repeal and the rationale for the determination by the agency that each adoption, amendment, or repeal is reasonably necessary to carry out the purpose for which it is proposed. Where the adoption or amendment of a regulation would mandate the use of specific technologies or equipment, a statement of the reasons why the agency believes these mandates or prescriptive standards are required.

(2) An identification of each technical, theoretical, and empirical study, report, or similar document, if any, upon which the agency relies in proposing the adoption, amendment, or repeal of a regulation.

(3) ~~(A)~~ A description of reasonable alternatives to the regulation and the agency's reasons for rejecting those alternatives. In the case of a regulation that would mandate the use of specific technologies or equipment or prescribe specific actions or procedures, the imposition of performance standards shall be considered as an alternative.

~~(B) A description of reasonable alternatives to the regulation that would lessen any adverse impact on small business and the agency's reasons for rejecting those alternatives.~~

~~(C) Notwithstanding subparagraph (A) or (B), an agency is not required to artificially construct alternatives, describe unreasonable alternatives, or justify why it has not described alternatives.~~

(4) Facts, evidence, documents, testimony, or other evidence on which the agency relies to support an initial determination that the action will not have a significant adverse economic impact on business *and small business*.

(5) A department, board, or commission within the Environmental Protection Agency, the Resources Agency, or the Office of the State Fire Marshal shall describe its efforts, in connection with a proposed rulemaking action, to avoid unnecessary duplication or conflicts with federal regulations contained in the Code of Federal Regulations addressing the same issues. These agencies may adopt regulations different from federal regulations contained in the Code of Federal Regulations

1 addressing the same issues upon a finding of one or more of the
2 following justifications:

3 (A) The differing state regulations are authorized by law.

4 (B) The cost of differing state regulations is justified by the
5 benefit to human health, public safety, public welfare, or the
6 environment.

7 (6) *The small business economic impact statement, as required*
8 *by Section 11346.3.*

9 (c) A state agency that adopts or amends a regulation mandated
10 by federal law or regulations, the provisions of which are identical
11 to a previously adopted or amended federal regulation, shall be
12 deemed to have complied with subdivision (b) if a statement to the
13 effect that a federally mandated regulation or amendment to a
14 regulation is being proposed, together with a citation to where an
15 explanation of the provisions of the regulation can be found, is
16 included in the notice of proposed adoption or amendment
17 prepared pursuant to Section 11346.5. However, the agency shall
18 comply fully with this chapter with respect to any provisions in the
19 regulation that the agency proposes to adopt or amend that are
20 different from the corresponding provisions of the federal
21 regulation.

22 SEC. 6. Section 11346.3 of the Government Code is amended
23 to read:

24 11346.3. (a) State agencies proposing to adopt, amend, or
25 repeal any administrative regulation shall assess the potential for
26 adverse economic impact on California business enterprises, *small*
27 *businesses*, and individuals, avoiding the imposition of
28 unnecessary or unreasonable regulations or reporting,
29 recordkeeping, or compliance requirements. For purposes of this
30 subdivision, assessing the potential for adverse economic impact
31 shall require agencies, when proposing to adopt, amend, or repeal
32 a regulation, to adhere to the following requirements, to the extent
33 that these requirements do not conflict with other state or federal
34 laws:

35 (1) The proposed adoption, amendment, or repeal of a
36 regulation shall be based on adequate information concerning the
37 need for, and consequences of, proposed governmental action.

38 (2) (A) The state agency, prior to submitting a proposal to
39 adopt, amend, or repeal a regulation to the office, shall consider the
40 proposal's impact on business, with consideration of industries

1 affected including the ability of California businesses to compete
2 with businesses in other states. For purposes of evaluating the
3 impact on the ability of California businesses to compete with
4 businesses in other states, an agency shall consider, but not be
5 limited to, information supplied by interested parties.

6 (B) *The state agency, prior to submitting a proposal to adopt,*
7 *amend, or repeal a regulation to the office, shall consider the*
8 *proposal's impact on small business by preparing a small business*
9 *economic impact statement, with consideration of industries*
10 *affected, including the ability of California small businesses to*
11 *compete with businesses in other states. For purposes of*
12 *evaluating the impact on the ability of California small businesses*
13 *to compete with businesses in other states, an agency shall*
14 *consider, but not be limited to, information supplied by interested*
15 *parties. The small business economic impact statement shall*
16 *include all of the following:*

17 (i) *An identification and estimate of the number of small*
18 *businesses subject to the proposed regulation.*

19 (ii) *The projected reporting, recordkeeping, and other*
20 *administrative costs required for compliance with the proposed*
21 *regulation, including the type of professional skills necessary for*
22 *preparation of the report or record.*

23 (iii) *A statement of the probable effect on impacted small*
24 *businesses.*

25 (iv) *A description of any less intrusive or less costly alternative*
26 *methods of achieving the purpose of the proposed regulations,*
27 *specifically considering all of the following methods:*

28 (I) *The establishment of less stringent compliance or reporting*
29 *requirements for small businesses.*

30 (II) *The establishment of less stringent schedules or deadlines*
31 *for compliance or reporting requirements for small businesses.*

32 (III) *The consolidation or simplification of compliance or*
33 *reporting requirements for small businesses.*

34 (IV) *The establishment of performance standards for small*
35 *businesses to replace design or operational standards required in*
36 *the proposed regulation.*

37 (V) *The exemption of small businesses from all or any part of*
38 *the requirements contained in the proposed regulation.*

39 (C) ~~It is not the intent of this section to impose additional~~
40 ~~criteria on agencies, above that which exists in current law, in~~

~~1 assessing adverse economic impact on California business~~
~~2 enterprises, but only to~~ assure that the assessment *of adverse*
3 economic impact on California business enterprises and small
4 businesses is made early in the process of initiation and
5 development of a proposed adoption, amendment, or repeal of a
6 regulation.

(b) (1) All state agencies proposing to adopt, amend, or repeal
8 any administrative regulations shall assess whether and to what
9 extent it will affect the following:

(A) The creation or elimination of jobs within the State of
11 California.

(B) The creation of new businesses *or small businesses* or the
13 elimination of existing businesses *or small businesses* within the
14 State of California.

(C) The expansion of businesses *and small businesses*
16 currently doing business within the State of California.

(2) This subdivision does not apply to the University of
18 California, the Hastings College of the Law, or the Fair Political
19 Practices Commission.

(3) Information required from state agencies for the purpose of
21 completing the assessment may come from existing state
22 publications.

(c) No administrative regulation adopted on or after January 1,
24 1993, that requires a report shall apply to businesses, unless the
25 state agency adopting the regulation makes a finding that it is
26 necessary for the health, safety, or welfare of the people of the state
27 that the regulation apply to businesses.

SEC. 7. Section 11346.4 of the Government Code is amended
29 to read:

11346.4. (a) At least 45 days prior to the hearing and close of
31 the public comment period on the adoption, amendment, or repeal
32 of a regulation, notice of the proposed action shall be:

(1) Mailed to every person who has filed a request for notice of
34 regulatory actions with the state agency. Each state agency shall
35 give a person filing a request for notice of regulatory actions the
36 option of being notified of all proposed regulatory actions or being
37 notified of regulatory actions concerning one or more particular
38 programs of the state agency.

(2) In cases in which the state agency is within a state
40 department, mailed or delivered to the director of the department.

(3) Mailed to *the California Small Business Advocate*, as defined in Section 65054.1, and to a representative number of small business enterprises or their representatives that are likely to be affected by the proposed action. “Representative” for the purposes of this paragraph includes, but is not limited to, a trade association, industry association, professional association, or any other business group or association of any kind that represents a business enterprise or employees of a business enterprise.

(4) When appropriate in the judgment of the state agency, mailed to any person or group of persons whom the agency believes to be interested in the proposed action and published in the form and manner as the state agency shall prescribe.

(5) Published in the California Regulatory Notice Register as prepared by the office for each state agency’s notice of regulatory action.

(6) Posted on the state agency’s Web site if the agency has a Web site.

(b) The effective period of a notice issued pursuant to this section shall not exceed one year from the date thereof. If the adoption, amendment, or repeal of a regulation proposed in the notice is not completed and transmitted to the office within the period of one year, a notice of the proposed action shall again be issued pursuant to this article.

(c) Once the adoption, amendment, or repeal is completed and approved by the office, no further adoption, amendment, or repeal to the noticed regulation shall be made without subsequent notice being given.

(d) The office may refuse to publish a notice submitted to it if the agency has failed to comply with this article.

(e) The office shall make the California Regulatory Notice Register available to the public and state agencies at a nominal cost that is consistent with a policy of encouraging the widest possible notice distribution to interested persons.

(f) Where the form or manner of notice is prescribed by statute in any particular case, in addition to filing and mailing notice as required by this section, the notice shall be published, posted, mailed, filed, or otherwise publicized as prescribed by that statute. The failure to mail notice to any person as provided in this section shall not invalidate any action taken by a state agency pursuant to this article.

SEC. 8. Section 11346.45 of the Government Code is amended to read:

11346.45. (a) In order to increase public participation and improve the quality of regulations, state agencies proposing to adopt regulations shall, prior to publication of the notice required by Section 11346.5, involve parties who would be subject to the proposed regulations in public discussions regarding those proposed regulations, when the proposed regulations involve complex proposals or a large number of proposals that cannot easily be reviewed during the comment period.

(b) *In order to improve the quality of regulations, state agencies proposing to adopt regulations that may have an adverse impact on small businesses shall, prior to publication of the notice required by Section 11346.5, submit their proposed action to the California Small Business Advocate. The California Small Business Advocate shall, within 30 days of receipt of the proposed action from the agency, submit comments and recommended changes to the agency. The agency shall respond to these comments and recommended changes in the final statement of reasons, as required by Sections 11347.6 and 11346.9. If the California Small Business Advocate does not make a submission to the agency within the time allotted, the agency shall so indicate in the final statement of reasons.*

(c) This section does not apply to a state agency in any instance where that state agency is required to implement federal law and regulations for which there is little or no discretion on the part of the state to vary.

~~(e)~~

(d) If the agency does not or cannot comply with the provisions of subdivision (a), it shall state the reasons for noncompliance with reasonable specificity in the rulemaking record.

~~(d)~~

(e) The provisions of ~~this section~~ subdivision (a) shall not be subject to judicial review or to the provisions of Section 11349.1.

SEC. 9. Section 11346.5 of the Government Code is amended to read:

11346.5. (a) The notice of proposed adoption, amendment, or repeal of a regulation shall include the following:

(1) A statement of the time, place, and nature of proceedings for adoption, amendment, or repeal of the regulation.

(2) Reference to the authority under which the regulation is proposed and a reference to the particular code sections or other provisions of law that are being implemented, interpreted, or made specific.

(3) An informative digest drafted in plain English in a format similar to the Legislative Counsel's digest on legislative bills. The informative digest shall include the following:

(A) A concise and clear summary of existing laws and regulations, if any, related directly to the proposed action and of the effect of the proposed action.

(B) If the proposed action differs substantially from an existing comparable federal regulation or statute, a brief description of the significant differences and the full citation of the federal regulations or statutes.

(C) A policy statement overview explaining the broad objectives of the regulation and, if appropriate, the specific objectives.

(4) Any other matters as are prescribed by statute applicable to the specific state agency or to any specific regulation or class of regulations.

(5) A determination as to whether the regulation imposes a mandate on local agencies or school districts and, if so, whether the mandate requires state reimbursement pursuant to Part 7 (commencing with Section 17500) of Division 4.

(6) An estimate, prepared in accordance with instructions adopted by the Department of Finance, of the cost or savings to any state agency, the cost to any local agency or school district that is required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4, other nondiscretionary cost or savings imposed on local agencies, and the cost or savings in federal funding to the state.

For purposes of this paragraph, "cost or savings" means additional costs or savings, both direct and indirect, that a public agency necessarily incurs in reasonable compliance with regulations.

(7) If a state agency, in proposing to adopt, amend, or repeal any administrative regulation, makes an initial determination that the action may have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states,

1 it shall include the following information in the notice of proposed
2 action:

3 (A) Identification of the types of businesses that would be
4 affected.

5 (B) A description of the projected reporting, recordkeeping,
6 and other compliance requirements that would result from the
7 proposed action.

8 (C) The following statement: “The (name of agency) has made
9 an initial determination that the (adoption/amendment/repeal) of
10 this regulation may have a significant, statewide adverse economic
11 impact directly affecting business, including the ability of
12 California businesses to compete with businesses in other states.
13 The (name of agency) (has/has not) considered proposed
14 alternatives that would lessen any adverse economic impact on
15 business and invites you to submit proposals. Submissions may
16 include the following considerations:

17 (i) The establishment of differing compliance or reporting
18 requirements or timetables that take into account the resources
19 available to businesses.

20 (ii) Consolidation or simplification of compliance and
21 reporting requirements for businesses.

22 (iii) The use of performance standards rather than prescriptive
23 standards.

24 (iv) Exemption or partial exemption from the regulatory
25 requirements for businesses.”

26 (8) If a state agency, in adopting, amending, or repealing any
27 administrative regulation, makes an initial determination that the
28 action will not have a significant, statewide adverse economic
29 impact directly affecting business, including the ability of
30 California businesses to compete with businesses in other states,
31 it shall make a declaration to that effect in the notice of proposed
32 action. In making this declaration, the agency shall provide in the
33 record facts, evidence, documents, testimony, or other evidence
34 upon which the agency relies to support its initial determination.

35 An agency’s initial determination and declaration that a
36 proposed adoption, amendment, or repeal of a regulation may have
37 or will not have a significant, adverse impact on businesses,
38 including the ability of California businesses to compete with
39 businesses in other states, shall not be grounds for the office to
40 refuse to publish the notice of proposed action.

(9) If a state agency, in proposing to adopt, amend, or repeal any administrative regulation, makes an initial determination that the action may have a significant, statewide adverse economic impact directly affecting small business, including the ability of California businesses to compete with small businesses in other states, it shall include the following information in the notice of proposed action:

(A) Identification of the types of small businesses that would be affected.

(B) A description of the projected reporting, recordkeeping, and other compliance requirements that would result from the proposed action.

(C) The following statement: “The (name of agency) has made an initial determination that the (adoption/amendment/repeal) of this regulation may have a significant, statewide adverse economic impact directly affecting small business, including the ability of California businesses to compete with small businesses in other states. The (name of agency) (has/has not) considered proposed alternatives that would lessen any adverse economic impact on small business and invites you to submit proposals. Submissions may include the following considerations:

(i) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small businesses.

(ii) Consolidation or simplification of compliance and reporting requirements for small businesses.

(iii) The use of performance standards rather than prescriptive standards.

(iv) Exemption or partial exemption from the regulatory requirements for businesses.”

(10) If a state agency, in adopting, amending, or repealing any administrative regulation, makes an initial determination that the action will not have a significant, statewide adverse economic impact affecting small business, including the ability of California small businesses to compete with businesses in other states, it shall make a declaration to that effect in the notice of proposed action. In making this declaration, the agency shall provide in the record facts, evidence, documents, testimony, or other evidence upon which the agency relies to support its initial determination. An agency’s initial determination and declaration that a proposed

1 *adoption, amendment, or repeal of a regulation may have or will*
2 *not have a significant, adverse impact on small businesses,*
3 *including the ability of California small businesses to compete*
4 *with businesses in other states, shall not be grounds for the office*
5 *to refuse to publish the notice of proposed action.*

6 (11) A description of all cost impacts, known to the agency at
7 the time the notice of proposed action is submitted to the office,
8 that a representative private person, *small business*, or business
9 would necessarily incur in reasonable compliance with the
10 proposed action.

11 If no cost impacts are known to the agency, it shall state the
12 following:

13 “The agency is not aware of any cost impacts that a
14 representative private person, *small business*, or business would
15 necessarily incur in reasonable compliance with the proposed
16 action.”

17 ~~(10)–~~

18 (12) A statement of the results of the assessment required by
19 subdivision (b) of Section 11346.3.

20 ~~(11)–~~

21 (13) The finding prescribed by subdivision (c) of Section
22 11346.3, if required.

23 ~~(12)–~~

24 (14) A statement that the action would have a significant effect
25 on housing costs, if a state agency, in adopting, amending, or
26 repealing any administrative regulation, makes an initial
27 determination that the action would have that effect. In addition,
28 the agency officer designated in paragraph ~~(14)~~ (16), shall make
29 available to the public, upon request, the agency’s evaluation, if
30 any, of the effect of the proposed regulatory action on housing
31 costs.

32 ~~(13)–~~

33 (15) A statement that the adopting agency must determine that
34 no reasonable alternative considered by the agency or that has
35 otherwise been identified and brought to the attention of the
36 agency would be more effective in carrying out the purpose for
37 which the action is proposed or would be as effective and less
38 burdensome to affected private persons than the proposed action.

39 ~~(14)–~~

1 (16) The name and telephone number of the agency
2 representative and designated backup contact person to whom
3 inquiries concerning the proposed administrative action may be
4 directed.

5 ~~(15)~~—

6 (17) The date by which comments submitted in writing must be
7 received to present statements, arguments, or contentions in
8 writing relating to the proposed action in order for them to be
9 considered by the state agency before it adopts, amends, or repeals
10 a regulation.

11 ~~(16)~~—

12 (18) Reference to the fact that the agency proposing the action
13 has prepared a statement of the reasons for the proposed action, has
14 available all the information upon which its proposal is based, and
15 has available the express terms of the proposed action, pursuant to
16 subdivision (b).

17 ~~(17)~~—

18 (19) A statement that if a public hearing is not scheduled, any
19 interested person or his or her duly authorized representative may
20 request, no later than 15 days prior to the close of the written
21 comment period, a public hearing pursuant to Section 11346.8.

22 ~~(18)~~—

23 (20) A statement indicating that the full text of a regulation
24 changed pursuant to Section 11346.8 will be available for at least
25 15 days prior to the date on which the agency adopts, amends, or
26 repeals the resulting regulation.

27 ~~(19)~~—

28 (21) A statement explaining how to obtain a copy of the final
29 statement of reasons once it has been prepared pursuant to
30 subdivision (a) of Section 11346.9.

31 ~~(20)~~—

32 (22) If the agency maintains an Internet Web site or other
33 similar forum for the electronic publication or distribution of
34 written material, a statement explaining how materials published
35 or distributed through that forum can be accessed.

36 (b) The agency representative designated in paragraph ~~(14)~~
37 ~~(16)~~ of subdivision (a) shall make available to the public upon
38 request the express terms of the proposed action. The
39 representative shall also make available to the public upon request
40 the location of public records, including reports, documentation,

1 and other materials, related to the proposed action. If the
2 representative receives an inquiry regarding the proposed action
3 that the representative cannot answer, the representative shall refer
4 the inquiry to another person in the agency for a prompt response.

5 (c) This section shall not be construed in any manner that
6 results in the invalidation of a regulation because of the alleged
7 inadequacy of the notice content or the summary or cost estimates,
8 or the alleged inadequacy or inaccuracy of the housing cost
9 estimates, if there has been substantial compliance with those
10 requirements.

11 SEC. 10. Section 11347.6 of the Government Code is
12 amended to read:

13 11347.6. Each state agency that adopts regulations shall, in
14 the final statement of reasons, separately identify comments made
15 by *small businesses or organizations representing small*
16 *businesses that will be affected by the rule*, the Office of Small
17 Business Advocate, and the Technology, Trade, and Commerce
18 Agency pursuant to subdivision (e) of Section 15363.6 and
19 respond to each and every comment made by that office or agency
20 directed at the proposed action or at the procedures followed by the
21 agency in proposing or adopting the action, including providing a
22 basis for why those comments were rejected, if applicable.

23 SEC. 11. Section 11349.7 of the Government Code is
24 amended to read:

25 11349.7. The office, at the request of any standing, select, or
26 joint committee of the Legislature *or the California Small*
27 *Business Advocate*, shall initiate a priority review of any
28 regulation, group of regulations, or series of regulations that the
29 committee believes does not meet the standards set forth in Section
30 11349.1.

31 The office shall notify interested persons and shall publish
32 notice in the California Regulatory Notice Register that a priority
33 review has been requested, shall consider the written comments
34 submitted by interested persons, the information contained in the
35 rulemaking record, if any, and shall complete each priority review
36 made pursuant to this section within 90 calendar days of the receipt
37 of the committee's written request. During the period of any
38 priority review made pursuant to this section, all information
39 available to the office relating to the priority review shall be made
40 available to the public. In the event that the office determines that

1 a regulation does not meet the standards set forth in Section
2 11349.1, it shall order the adopting agency to show cause why the
3 regulation should not be repealed and shall proceed to seek repeal
4 of the regulation as provided by this section in accordance with the
5 following:

6 (a) In the event it determines that any of the regulations subject
7 to the review do not meet the standards set forth in Section
8 11349.1, the office shall within 15 days of the determination order
9 the adopting agency to show cause why the regulation should not
10 be repealed. In issuing the order, the office shall specify in writing
11 the reasons for its determination that the regulation does not meet
12 the standards set forth in Section 11349.1. The reasons for its
13 determination shall be made available to the public. The office
14 shall also publish its order and the reasons therefor in the
15 California Regulatory Notice Register. In the case of a regulation
16 for which no, or inadequate, information relating to its necessity
17 can be furnished by the adopting agency, the order shall specify the
18 information which the office requires to make its determination.

19 (b) No later than 60 days following receipt of an order to show
20 cause why a regulation should not be repealed, the agency shall
21 respond in writing to the office. Upon written application by the
22 agency, the office may extend the time for an additional 30 days.

23 (c) The office shall review and consider all information
24 submitted by the agency in a timely response to the order to show
25 cause why the regulation should not be repealed, and determine
26 whether the regulation meets the standards set forth in Section
27 11349.1. The office shall make this determination within 60 days
28 of receipt of an agency's response to the order to show cause. If the
29 office does not make a determination within 60 days of receipt of
30 an agency's response to the order to show cause, the regulation
31 shall be deemed to meet the standards set forth in subdivision (a)
32 of Section 11349.1. In making this determination, the office shall
33 also review any written comments submitted to it by the public
34 within 30 days of the publication of the order to show cause in the
35 California Regulatory Notice Register. During the period of
36 review and consideration, the information available to the office
37 relating to each regulation for which the office has issued an order
38 to show cause shall be made available to the public. The office
39 shall notify the adopting agency within two working days of the
40 receipt of information submitted by the public regarding a

regulation for which an order to show cause has been issued. If the office determines that a regulation fails to meet the standards, it shall prepare a statement specifying the reasons for its determination. The statement shall be delivered to the adopting agency, the Legislature, and the Governor and shall be made available to the public and the courts. Thirty days after delivery of the statement required by this subdivision the office shall prepare an order of repeal of the regulation and shall transmit it to the Secretary of State for filing.

(d) The Governor, within 30 days after the office has delivered the statement specifying the reasons for its decision to repeal, as required by subdivision (c), may overrule the decision of the office ordering the repeal of a regulation. The regulation shall then remain in full force and effect. Notice of the Governor's action and the reasons therefor shall be published in the California Regulatory Notice Register.

The Governor shall transmit to the rules committee of each house of the Legislature a statement of reasons for overruling the decision of the office, plus any other information that may be requested by either of the rules committees.

(e) In the event that the office orders the repeal of a regulation, it shall publish the order and the reasons therefor in the California Regulatory Notice Register.

SEC. 12. Section 11350 of the Government Code is amended to read:

11350. (a) Any interested person, *including, but not limited to, small businesses and organizations or trade associations whose members are affected by the regulation*, may obtain a judicial declaration as to the validity of any regulation or order or repeal by bringing an action for declaratory relief in the superior court in accordance with the Code of Civil Procedure. The right to judicial determination shall not be affected by the failure either to petition or to seek reconsideration of a petition filed pursuant to Section 11340.7 before the agency promulgating the regulation or order of repeal. The regulation or order of repeal may be declared to be invalid for a substantial failure to comply with this chapter, or, in the case of an emergency regulation or order of repeal, upon the ground that the facts recited in the statement prepared pursuant to subdivision (b) of Section 11346.1 do not constitute an emergency within the provisions of Section 11346.1.

(b) In addition to any other ground that may exist, a regulation or order of repeal may be declared invalid if either of the following exists:

(1) The agency's determination that the regulation is reasonably necessary to effectuate the purpose of the statute, court decision, or other provision of law that is being implemented, interpreted, or made specific by the regulation is not supported by substantial evidence.

(2) The agency declaration pursuant to paragraph (8) of subdivision (a) of Section 11346.5 is in conflict with substantial evidence in the record.

(c) The approval of a regulation or order of repeal by the office or the Governor's overruling of a decision of the office disapproving a regulation or order of repeal shall not be considered by a court in any action for declaratory relief brought with respect to a regulation or order of repeal.

(d) In a proceeding under this section, a court may only consider the following evidence:

(1) The rulemaking file prepared under Section 11347.3.

(2) The written statement prepared pursuant to subdivision (b) of Section 11346.1.

(3) An item that is required to be included in the rulemaking file but is not included in the rulemaking file, for the sole purpose of proving its omission.

(4) Any evidence relevant to whether a regulation used by an agency is required to be adopted under this chapter.

SEC. 13. Section 11350.3 of the Government Code is amended to read:

11350.3. Any interested person, *including, but not limited to, small businesses and organizations or trade associations whose members are affected by the regulation*, may obtain a judicial declaration as to the validity of a regulation or order of repeal which the office has disapproved pursuant to Section 11349.3, or 11349.6, or of a regulation that has been ordered repealed pursuant to Section 11349.7 by bringing an action for declaratory relief in the superior court in accordance with the Code of Civil Procedure. The court may declare the regulation valid if it determines that the regulation meets the standards set forth in Section 11349.1 and that the agency has complied with this chapter. If the court so

1 determines, it may order the office to immediately file the
2 regulation with the Secretary of State.

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